

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 7, 2003

IN RE:)	
)	
APPLICATION OF JACKSON ENERGY)	DOCKET NO.
AUTHORITY FOR A CERTIFICATE OF)	03-00438
CONVENIENCE AND NECESSITY)	

**ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO QUASH OR, IN THE ALTERNATIVE,
FOR PROTECTIVE ORDER AND
REQUEST FOR EMERGENCY CONSIDERATION**

This matter is before the Hearing Officer in this docket for consideration of the Motion to Quash or, in the Alternative, for Protective Order and Request for Emergency Consideration ("Motion") filed by Jackson Energy Authority ("JEA") on November 6, 2003. JEA's Motion was filed in response to five subpoenas duces tecum served by Charter Communications, Inc. ("Charter") on JEA on November 4, 2003, for appearance of witnesses and production of documents at the Hearing before the Tennessee Regulatory Authority (the "Authority") scheduled for at 11:00 a.m. on November 10, 2003. Charter filed a response to JEA's Motion on November 7, 2003. Based upon a review of the docket file, JEA's Motion and Charter's response, the Hearing Officer hereby grants in part and denies in part the Motion filed by JEA for the reasons set forth in this Order.

Availability of Witnesses and Production of Documentation at the Hearing

The subpoenas served by Charter are directed to five individuals: John W. Williams, Dana R. Wheeler, Kim Kersey, Thomas E. Nanney and Darrell T Pope. Each subpoena requests production of the same documents. Three of the individuals, Williams, Wheeler and Kersey have submitted pre-filed testimony in this matter. In its Motion, JEA represents that these three witnesses will be in attendance at the Hearing on November 10. Therefore, Williams, Wheeler and Kersey will be available at the Hearing for cross-examination by counsel for Charter. Because these witnesses filed testimony and are subject to cross-examination, it is not unreasonable to require that they have documents with them at the Hearing which are relevant to their testimony.

Two other individuals, Nanney and Pope, have been subpoenaed to appear at the Hearing to provide testimony and the same documentation as requested of Williams, Wheeler and Kersey. Nanney is identified in the subpoena as Senior Vice President of the Electric Division for JEA. Pope is identified in the subpoena as the Telecommunications Project Manager for JEA. Each person has been identified as such in JEA's application seeking a Certificate of Public Convenience and Necessity ("CCN") to provide facilities-based telecommunications services within Madison County, Tennessee.

The Tennessee Uniform Administrative Procedures Act, at Tenn. Code Ann. § 4-5-301 et seq., sets forth guidelines for the conduct of a contested case proceeding. Tenn. Code Ann. § 4-5-312(b) provides the following requirement regarding the procedure at a hearing:

(b) To the extent necessary for full disclosure of all relevant facts and issues, the administrative judge or hearing officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the pre-hearing order.

Tenn. Code Ann. § 4-5-310(c) provides for limitations on an intervenor's participation during the course of the proceedings as follows:

(c) If a petitioner qualifies for intervention, the administrative judge or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

- (1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;
- (2) Limiting the intervenor's use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings;...

A review of the application filed by JEA and consideration of the issues raised therein indicates that full disclosure of "relevant facts and issues" requires that Nanney and Pope be made available to testify during the Hearing. The key to permitting Charter to elicit testimony from Nanney and Pope is that Charter's questioning of these witnesses be limited to "relevant facts and issues."

In order to promote the orderly and prompt conduct of the proceedings, the Hearing Officer finds that Charter's use of cross-examination and production of documents pursuant to subpoena shall be limited to the facts put forth in pre-filed testimony of witnesses and the issues directly related to JEA's application and raised in the Charter's Petition for Intervention filed by Charter on October 10, 2003, as limited by the Hearing Officer's Order of November 3, 2003.

Because each of the five subpoenas requests production of the same documentation, all of the subpoenas can be considered at one time. While the document production request in each of the subpoenas is lengthy in language, it is not overly broad or unreasonable in scope to the extent that it is directly related to facts and issues arising from JEA's application and from the testimony filed by JEA in support of its application. Also, because each of the five subpoenas requests production of the same documentation, JEA can make one production of the documentation thereby curing any objection that the multiple requests are unreasonably

cumulative or duplicative. To the extent that the document request seeks production of documents already filed with the Authority in the docket file in this matter, JEA may rely upon those documents in compliance with the applicable parts of the document request. In accordance with the November 3, 2003 Order, cross-examination and production of documents shall not be used as a tool to conduct discovery during the Hearing.

Request for Protective Order

To the extent that JEA's Motion seeks protection in restricting cross-examination and document production, such a request is granted as set forth above. Nevertheless, JEA's Motion does not indicate whether or not the testimony or documentation requested is of a confidential nature, as might fall within or require the issuance of a separate Protective Order. For this reason the parties are required to meet and discuss, in advance of the Hearing, whether there is a need for a Protective Order in relation to the production of documents or testimony of witnesses. If a Protective Order is necessary, the parties are further directed to prepare a proposed Protective Order for review and entry by the Hearing Officer in advance of the Hearing on November 10, 2003.

IT IS THEREFORE ORDERED THAT:

1. The Motion to Quash or, in the Alternative, for Protective Order and Request for Emergency Consideration filed by Jackson Energy Authority is denied to the extent that John W. Williams, Dana R. Wheeler, Kim Kersey, Thomas E. Nanney and Darrell T. Pope are required to be in attendance and available for examination and cross-examination during the Hearing in this matter on November 10, 2003. The examination and cross-examination of these witnesses shall not interfere with the orderly and prompt conduct of these proceedings.

2. The Motion to Quash or, in the Alternative, for Protective Order and Request for Emergency Consideration filed by Jackson Energy Authority is denied to the extent that JEA shall produce the documentation requested in the subpoenas duces tecum served on John W. Williams, Dana R. Wheeler, Kim Kersey, Thomas E. Nanney and Darrell T. Pope subject to the guidelines set forth in this Order.

3. The Motion to Quash or, in the Alternative, for Protective Order and Request for Emergency Consideration filed by Jackson Energy Authority is granted to the extent that the examination and cross-examination of John W. Williams, Dana R. Wheeler, Kim Kersey, Thomas E. Nanney and Darrell T. Pope shall be limited to the facts put forth in pre-filed testimony of witnesses and the issues directly related to JEA's application and raised in the Petition for Intervention filed by Charter on October 10, 2003, as limited by the Hearing Officer's Order of November 3, 2002. The cross-examination of witnesses and production of documents shall not be used as tools to conduct discovery during the Hearing.

4. The parties shall meet and discuss, in advance of the Hearing, whether there is a need for a Protective Order in relation to the production of documents or testimony of witnesses. If a Protective Order is necessary, the parties shall prepare a proposed Protective Order for review and entry by the Hearing Officer in advance of the Hearing on November 10, 2003.


J. RICHARD COLLIER
ACTING AS HEARING OFFICER